

BEFORE  
THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554

RECEIVED

MAY - 2 2003

Federal Communications Commission  
Office of the Secretary

In the Matter of

ClickQuick II, LLC,  
San Marino at Laguna Lakes, L.L.C.  
a/k/a Bear Lakes Associates, Ltd., and  
Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd.

Petitioners

WC-03-112

-against-

BellSouth Telecommunications, Inc.

Respondent

**PETITION FOR DECLARATORY RULING THAT  
THE LOCATION OF THE DEMARCATION POINT  
PURSUANT TO 47 C.F.R. §68.105(d)(2) PREEMPTS  
THE LOCATION OF THE DEMARCATION POINT  
PURSUANT TO §25-4.0345(1)(B)(2)  
OF THE FLORIDA ADMINISTRATIVE CODE**

**To the Commission:**

Petitioners ClickQuick II, LLC, San Marino at Laguna Lakes, L.L.C. a/k/a Bear Lakes Associates, Ltd., and Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd., whose address is c/o ClickQuick II, LLC, 1307 Boston Township Line Road, Richmond, IN 47375, by their attorney, W. James Mac Naughton state as follows:

1. Petitioner ClickQuick II, LLC ("ClickQuick II") is a Florida limited liability company. ClickQuick II is engaged in the business of providing high speed internet access service to the residents of large multifamily residential properties in Florida.

2. Petitioner San Marino at Laguna Lakes, L.L.C. a/k/a Bear Lakes Associates, Ltd., owns and maintains a large multifamily residential complex located at 4200 N. Military Trail, West Palm Beach, Florida, a residential property commonly known as San Marino at Laguna Lakes ("San Marino"). ClickQuick II provides high speed internet access service to the residents of San Marino.

3. Respondent BellSouth Communications, Inc. ("BellSouth") claims that it installed all of the equipment used at San Marino to provide telephone service. That equipment includes devices commonly known as "66 blocks" located in the utility room of each building. There are four (4) pairs of twisted pair wiring that run from each "66 block" into each dwelling unit. The shortest run is approximately fifteen (15) feet and the longest run is approximately one hundred (100) feet.

4. ClickQuick II provides its service by attaching its facilities to the 66 block and using one (1) pair of the twisted pair wiring to deliver its service into the unit using a digital subscriber line ("DSL") signal. There is no economical way for ClickQuick II to provide its service at San Marino without using this one (1) pair of twisted wiring in this manner. BellSouth shares the use of the one (1) pair of twisted pair wiring used by ClickQuick II. BellSouth uses one (1) other pair of the twisted pair wiring without sharing that line with ClickQuick II. In addition, there are two (2) other pairs of twisted pair wiring that are not currently used by either ClickQuick II or BellSouth.

5. Petitioner Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd., owns and maintains a large multifamily residential complex located at 2925 S. Federal Highway, Boynton Beach, Florida, residential property commonly known as Villa Del Sol ("Villa Del Sol").

6. BellSouth claims that it installed all of the equipment used at Villa Del Sol to provide telephone service. That equipment includes devices commonly known as “66 blocks” located in the utility room of each building. There are four (4) pairs of twisted pair wiring that run from the “66 block” into the unit. The shortest run is approximately fifteen (15) feet and the longest run is approximately one hundred (100) feet.

7. ClickQuick II provides its service by attaching its facilities to the 66 block and using one (1) pair of the twisted pair wiring to deliver its service into the unit using a digital subscriber line (“DSL”) signal. There is no economical way for ClickQuick II to provide its service at San Marino without using this one (1) pair of twisted wiring in this manner. BellSouth shares the use of the one (1) pair of twisted pair wiring used by ClickQuick II. BellSouth uses one (1) other pair of the twisted pair wiring without sharing that line with ClickQuick II. In addition, there are two (2) other pairs of twisted pair wiring that are not currently used by either ClickQuick II or BellSouth.

8. Both San Marino and Villa Del Sol were constructed after January 1, 2000.

9. In or about December, 2002, BellSouth advised ClickQuick II that BellSouth was taking the position that the demarcation point for telephone wiring at San Marino and Villa Del Sol is at the wall plate inside each dwelling unit. BellSouth took this position in reliance on §25-4.0345(1)(B)(2) of the Florida Administrative Code which defines the “Demarcation Point” as “the point of physical interconnection (connecting block, terminal strip, jack, protector, optical network interface, or remote isolation device) between the customer’s premises wiring. Unless ordered otherwise by the [Florida Public Utilities Commission], the location of this point [for a Single Line/Multi Customer Building is] within the customer’s premises at a point easily

accessed by the customer.” Based on this position, BellSouth sent Petitioners a “cease and desist” letter, a true copy of which is annexed as Exhibit A.<sup>1</sup>

10. On or about January 31, 2003, ClickQuick II, acting as the duly authorized agent for San Marino at Laguna Lakes, L.L.C. and Villa Del Sol, L.L.C. sent a letter to BellSouth, a true copy of which is annexed as Exhibit B. The letter advises BellSouth that San Marino at Laguna Lakes, L.L.C. and Villa Del Sol, L.L.C. pursuant to 47 C.F.R. §68.105(d) each elect to set the demarcation point, as that term is defined and used in 47 C.F.R. Part 68 at a point 6” on the carrier side of the 66 block.

11. 47 C.F.R. §68.105(d)(2) states in pertinent part that “[i]f the provider of wireline telecommunications services does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points.”

12. Petitioners submit that the federal right of San Marino at Laguna Lakes, L.L.C. and Villa Del Sol, L.L.C. to set the demarcation point at 6” on the carrier’s side of the 66 block is in conflict with the asserted right of BellSouth to set the demarcation point at the wall plate inside the unit pursuant to state law.

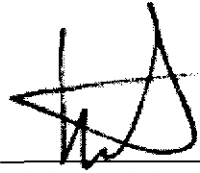
Therefore, Petitioners respectfully request the entry of an order declaring that:

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<sup>1</sup> Petitioners question whether BellSouth’s installation is truly a “Single Line/Multi Customer Building” type of installation. §25-4.0345(1)(B)(3) of the Florida Administrative Code sets the demarcation point for “Multi Line Systems/Single or Multi Customer Buildings – At a point within the same room and within 25 feet of the FCC registered terminal equipment or cross connect field.” There are four (4) twisted pairs running into each unit from the 66 blocks and BellSouth has claimed that it may need all four pairs to provide services. The presence of four (4) twisted pair and BellSouth’s claim to need all of them indicates that Bell South installed a “Multi Line System” at San Marino and Villa Del Sol.

- A. San Marino at Laguna Lakes, L.L.C. and Villa Del Sol, L.L.C. have the right to set the demarcation point at 6" on the carrier's side of the 66 block at the properties they own pursuant to 47 C.F.R. §68.105(d)(2); and
- B. ClickQuick II has the right to use the facilities on the customer's side of that demarcation point without interference by BellSouth; and
- C. §25-4.0345(1)(B)(2) of the Florida Administrative Code is preempted to the extent it conflicts with 47 C.F.R. §68.105(d)(2).

Woodbridge, NJ  
February 4, 2003



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W. James Mac Naughton  
Attorney for Petitioners ClickQuick II, LLC,  
San Marino at Laguna Lakes, L.L.C.  
a/k/a Bear Lakes Associates, Ltd., and  
Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd.

90 Woodbridge Center Drive  
Suite 610  
Woodbridge, NJ 07095  
732-634-3700 – office  
732-634-7499 – fax

To: BellSouth Communications, Inc.  
150 W. Flagler Street  
Suite 1910  
Miami, FL 33130

Attn: Sharon Liebman

BellSouth Telecommunications, Inc.  
Shoreline Tower Building  
190 West Flagler Street  
Suite 1910  
Miami, FL 33139

sharon.lieberman@bellsouth.com

Sharon R. Lieberman  
Attorney

305 347 9876  
Fax 305 375 0289

January 17, 2003

**VIA FACSIMILE AND US MAIL**

W. James MacNaughton  
90 Woodbridge Center Drive  
Suite 610  
Woodbridge, NJ 07095

**RE: SAN MARINO APARTMENTS, WEST PALM BEACH, FLORIDA  
VILLA DEL SOL APARTMENTS, BOYNTON BEACH, FLORIDA**

Dear Mr. MacNaughton:

This is in follow-up to our conversation on January 9, 2003 regarding your client's use of BellSouth's network terminating wire at the above properties without authorization. Ms. Ferguson of BellSouth forwarded a letter dated December 4, 2002 to you advising that your client's use was not authorized, however, your client's use has continued.

You advised that your client is an internet service provider (ISP). An ISP is not a telecommunications carrier and, thus, is not entitled to access to unbundled network elements such as network terminating wire. Access to UNEs is only for telecommunications carriers. See 47 USC 251 (referencing duty to provide to any requesting "telecommunications carrier" nondiscriminatory access to network elements on an unbundled basis) and 47 USC 3 (defining telecommunications carrier as any provider of telecommunications services and defining information service).

As discussed and noted in our December 4, 2002 letter, BellSouth has installed the regulated network terminating wire from the building terminal in the telephone entrance room to the network interface installed in each apartment. The Florida Public Service Commission (FPSC) requires that, in multi-dwelling buildings, the network interface/demarcation point be installed within the customer's premises at a point easily accessed by the customer. See FPSC Rule 24-4.0345. The demarcation point is the point of physical interconnection between the telephone network and the customer's premises wiring. The FPSC Rule has not been preempted by FCC rules regarding "minimum point of entry." See page 23, FCC 97-209, which was attached to our December 4, 2002 letter.

BellSouth installed the network terminating wire. It is the property of BellSouth and is part of its telephone network. Your client's use of BellSouth's network terminating wire is not authorized. Further, as discussed, your client's use of the wire is causing trouble reports to BellSouth, as your client is "taking" the wire at the inside network interface and interfering with the other existing wire(s) providing BellSouth service.

Your client is directed to cease and desist from use of the network terminating wire within 20 days from the date of this letter. Please direct your client to coordinate the cessation with Jackie Ferguson of BellSouth to avoid further disruption in service to BellSouth customers. Ms. Ferguson's telephone number is 361-439-9190. If your client does not cease and desist, BellSouth will pursue remedies available to it under law.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sharon Liebman'.

Sharon Liebman

cc: Jackie Ferguson

ClickQuick II, LLC  
1307 Boston Township Line Road  
Richmond, IN 47375

January 30, 2003

By Fax and Mail

BellSouth Telecommunications, Inc.  
150 W. Flagler Street  
Suite 1910  
Miami, FL 33130

Attn: Sharon Liebman

Dear Sirs:

ClickQuick II, LLC is the duly authorized agent of San Marino at Laguna Lakes, L.L.C. a/k/a Bear Lakes Associates, Ltd., for the use and disposition of existing cable and telephone equipment at 4200 N. Military Trail, West Palm Beach, Florida, a residential property commonly known as San Marino at Laguna Lakes ("San Marino").

ClickQuick II is also the duly authorized agent of Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd., for the use and disposition of existing cable and telephone equipment at 2925 S. Federal Highway, Boynton Beach, Florida, residential property commonly known as Villa Del Sol ("Villa Del Sol").

Please be advised that effective immediately, the owners of San Marino and Villa Del Sol elect pursuant to 47 C.F.R. §68.105 (d) to set the Demarcation Point, as that term is defined and used in Part 68 of 47 C.F.R., at a point six inches (6") on the carrier's side of the "66 block." You are requested to not interfere with the use of Premises Wiring as defined and used in Part 68 of 47 C.F.R. by ClickQuick II, LLC. See Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association, Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 88-57, RM-5643, FCC No. 97-209, 12 FCC Rcd 11897 (1997) at ¶ 32. ("Simple Inside Wire Order"). ("Premises owners or customers, however, have a right of access to wiring on the customer's side of the demarcation point, and a responsibility to maintain such wiring.")

You are requested to direct any inquiries regarding this matter to our attorney, W. James Mac Naughton at 90 Woodbridge Center Drive, Suite 610, Woodbridge, NJ 07095, phone number 732-634-3700 with information copies to James Vogel, Esq., 3936 Tamiami Trail No., Naples, FL 34103, phone number 239-262-4352.



Sincerely,

Alan Moore, Manager

CC: W. J. Mac Naughton  
J. Vogel

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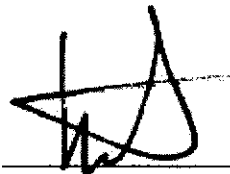
Respondent

**Affidavit of Service**

On December 11, 1998, I served a true copy of the annexed Notice of Entry and order entered December 2, 1998 by mailing the same in a sealed, postage prepaid envelope in an official depository of the U.S. Postal Service addressed to:

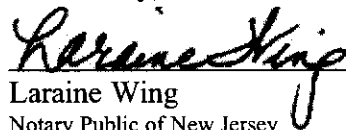
BellSouth Communications, Inc.  
150 W. Flagler Street  
Suite 1910  
Miami, FL 33130  
Attn: Sharon Liebman

Woodbridge, NJ  
February 4, 2003



\_\_\_\_\_  
W. James Mac Naughton

Sworn to before me this 4<sup>th</sup> day  
of February, 2003.



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Laraine Wing  
Notary Public of New Jersey  
My Commission Expires October 18, 2006